

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by SACRAMENTO NATURAL GAS STORAGE, LLC, for a Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities and Requests for Related Determinations.

Application 07-04-013
(Filed April 9, 2007)

DECISION GRANTING THE PETITION OF THE AVONDALE GLEN ELDER NEIGHBORHOOD ASSOCIATION TO MODIFY DECISION (D.) 13-11-018, WHICH GRANTED INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTION TO D.12-07-021

Summary

This decision grants the petition of the Avondale Glen Elder Neighborhood Association (AGENA) to modify Decision (D.) 13-11-018 to authorize payment of intervenor compensation awarded to AGENA from the Commission's Intervenor Compensation Fund (Fund). This decision modifies D.13-11-018 to pay from the Fund to AGENA \$1,225,811.66 (the unrecovered portion of the amount awarded in D.13-11-018), plus compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 2, 2013. This award is to be paid by the Fund, pursuant to Public Utilities Code Section 1807(b).¹ This proceeding is closed.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

1. Background

On April 9, 2009, Sacramento Natural Gas Storage, LLC (SNGS), filed Application 07-04-013 for a certificate of public convenience and necessity to construct and operate the Sacramento Natural Gas Storage Facility (Project) and approval of related requests.² Decision (D.) 12-07-021, denied the application and certified the environmental impact report prepared for the Project after determining that the environmental impacts and safety risks outweighed the benefits of the Project. No requests for rehearing of D.12-07-021 were filed.

On September 17, 2012, the Avondale Glen Elder Neighborhood Association (AGENA) timely filed a request for intervenor compensation.³ D.13-11-018 awarded AGENA \$1,462,280 in compensation for its substantial contribution to D.12-07-021 and ordered SNGS to pay the award, including interest, within 30 days of the decision. SNGS failed to pay AGENA this award of intervenor compensation.

According to AGENA's petition and exhibits attached thereto, SNGS went out of business and, on April 11, 2013, assigned its assets for liquidation to Greeley Asset Services, LLC (Assignee for the Benefit of Creditors (Assignee)).⁴ Pursuant to California statute and the Assignee's July 18, 2013 notice of assignment sent on behalf of SNGS, AGENA was required to submit a claim to the Assignee by December 31, 2013. On December 12, 2013, AGENA submitted a claim for the full

² SNGS amended the application on October 9, 2007, requesting that the Commission complete and certify an environmental impact report (EIR) for the Project.

³ AGENA amended its claim on October 8, 2012, but did not provide the Commission a corrected version of its claim until July 19, 2013.

⁴ Exhibit 2. An assignment for the benefit of creditors is governed by California statutes, rather than bankruptcy law. See generally Cal. Code Civ. Pro. §§ 493.010-493.060 and §§ 1800-1802.

amount of the intervenor compensation award (i.e., \$1,462,280) and, on September 5, 2014, the Assignee distributed \$236,468.34 to Legal Services of Northern California, as the representative of AGENA.

On January 9, 2014, the State Senate's Committee on Budget and Fiscal Review introduced Senate Bill (SB) 861 and, on June 13, 2014, an amended version of SB 861 was introduced. This version of the bill sought to amend § 1807 of the California Public Utilities Code, in part, to read:

(b) Due to the bankruptcy of Sacramento Natural Gas Storage, the commission's intervenor compensation award to the Avondale Glen Elder Neighborhood Association in A.07-04-031 has been reduced to a fraction of the amount awarded. In this limited circumstance, the commission may pay to the Avondale Glen Elder Neighborhood Association the difference between the amount received from the bankruptcy court and the amount awarded by the commission by increasing the fees collected in Section 401 for the limited purpose of D.13-11-018.

On June 19, 2014, SB 861 was enrolled and presented to Governor Brown. On June 20, 2014, the Governor signed SB 861, 2014 Chapter 35, § 156.5, which added § 1807(b) to the Public Utilities Code. The text concerning AGENA's intervenor compensation award was not altered.

On September 8, 2014, AGENA filed the petition to modify D.13-11-018 to authorize payment of the difference between the amount AGENA received as part of the non-judicial assignment for the benefit of creditors, authorized on September 5, 2014, totaling \$236,468.34, and the \$1,462,280 awarded by D.13-11-018, plus compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 2, 2013. The petition cites to the newly-enacted § 1807(b), which permits the Commission to authorize such payment and allows

for compensation to be paid from the Intervenor Compensation Fund.⁵ No responses to the petition were filed.

2. Procedural Requirements Under Rule 16.4

Rule 16.4 governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires petitions for modification to concisely state the justification for the proposed relief and to propose specific wording for all requested modifications. If the petition for modification alleges new or changed facts, it must be supported by either a declaration or affidavit.

AGENA's petition contains a concise but thorough statement of justification for the proposed modifications relating to the award of intervenor compensation and a declaration in support of the petition. AGENA filed its petition on September 8, 2014, within one year of the issuance of D.13-11-018, as required by Rule 16.4(d). AGENA's petition complies with the procedural requirements of Rule 16.4.

3. Discussion

Section 1807(b) states "the commission may pay to [AGENA] the difference between the amount received from the bankruptcy court and the amount awarded by the commission" (Emphasis Added.) As stated above, the insolvency of SNGS is occurring through non-judicial means and no bankruptcy court is involved. Therefore, in order for the Commission to award AGENA the remainder of the intervenor compensation claim, the Commission must verify the intent of the Legislature.

⁵ D.00-01-020 established the Intervenor Compensation Program Fund from which awards will be paid in quasi-legislative rulemaking proceedings where no specific respondents are named. The program is funded through the fees collected on an annual basis from regulated energy, telecommunications, and water utilities pursuant to § 401, et seq.

In particular, the Commission must determine whether the Legislature intended to authorize an award to AGENA based specifically on the difference between a potential bankruptcy court award and the original compensation award or if the Legislature instead intended to authorize an award to AGENA based on the difference between any money collected through an insolvency-related proceeding and the original compensation award. Because the statutory language allows for more than one reasonable interpretation “courts may consider various extrinsic aids including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.” *People v. Yartz* (2005) 37 Cal.4th 529, 537-38. Additionally, “[w]here a statute is theoretically capable of more than one construction we choose that which most comports with the intent of Legislature.” *California Mfrs. Assn. v. Public Utilities Commission* (1979) 24 Cal.3d 844, 846.

In order to determine intent, the Commission first looked to the Legislative Counsel’s Digest on SB 861. The Digest, however, uses similar language as the amendment and mentions only an award from a bankruptcy court. In addition, three floor analyses of SB 861 were released by the Legislature – two by the Senate (on March 8, 2014 and June 15, 2014) and one by the Assembly (June 15, 2014). The analyses do not address the provisions concerning an award of money to AGENA. Review of the California Senate Daily Journal and the California Assembly Daily Journal provided no additional insight.

According to the Final Action Report: A Summary of the 2014 Budget Act, prepared by Senator Mark Leno and the Senate Committee on Budget and Fiscal review, the bill contained language that “allow[s] the [Commission] to set up a

procedure to provide intervenor compensation in the Avondale natural gas case.”⁶ The summary does not mention the bankruptcy court, instead stressing the goal of providing compensation to AGENA for the work on the proceeding, without an apparent concern about the process or means used to address the liquidation and assignment of the assets in connection with SNGS’s dissolution.

As a report, and as a written explanation regarding the need for the amendment, this document should be given great weight for determining legislative intent. *See Southland Mechanical Constructors v. Nixen* (1981) 119 Cal. App. 3d 417, 227 (stating “[i]n our determination, we follow the general rule that legislative records may be looked at to determine legislative intention, and it will be presumed that the Legislature adopted the proposed legislation with the intent and meaning expressed in the committee reports.”).

Here, the purpose of the amendment, as briefly stated in the Final Action Report, was to award AGENA the funds stemming from its participation in the proceeding. If the text of the statute is strictly interpreted to require a decision from a bankruptcy court before the Commission may authorize payment to AGENA, the purpose of the amendment will have been stymied and the legislative intent will have been unfulfilled. *See Leslie Salt Co. v. S.F. Bay Conserv. and Develp. Comm.* (1984) 153 Cal. App. 3d 605, 614 (affirming that California courts should “resist blind obedience to the putative ‘plain meaning’ of a statutory phrase where literal interpretation would defeat the Legislature’s central object.”). For this reason, the Commission concludes that the Legislature’s intent was to authorize payment of funds to AGENA totaling the

⁶ *See* Final Action Report, A Summary of the 2014 Budget Act, 2-27, available online at: http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/2014_FINALACTIONREPORT.pdf.

difference between the funds awarded by the Commission's intervenor compensation award, plus appropriate interest, and the funds already received by AGENA, regardless of the type of insolvency proceeding entered into by SNGS.

Modification of D.13-11-018 is warranted because SNGS, as the payer of the award, has gone out of business and its assets have been liquidated. As a result, SNGS cannot pay the compensation awarded for AGENA's substantial contribution to D.12-07-021. The Legislature has acted to address this situation by permitting the Commission to compensate AGENA for its substantial contribution by increasing the fees collection in § 401 for the limited purpose of D.13-11-018.

The requested modification of D.13-11-018 is consistent with §§ 1801.3 (b) and (d) of the intervenor compensation statutes. These state:

It is the intent of the Legislature that:...The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process...[and]...
Intervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions.

Therefore, the unopposed petition is granted. Because the Intervenor Compensation Fund is financed through the fees collected pursuant to § 401, et seq., paying from the Fund the difference between the monies already received by AGENA and the amount awarded by D.13-11-018 is consistent with § 1807(b).

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Public Utilities Code and

Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Richard Smith is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.13-11-018 determined that AGENA satisfied all procedural requirements necessary to claim compensation in this proceeding and awarded AGENA \$1,462,280 for its substantial contribution to D.12-07-021. D.13-11-018 directed SNGS to pay the award within 30 days of the effective date of D.13-11-018.

2. SNGS has gone out of business and, on April 11, 2013, assigned its assets for liquidation to Greeley Asset Services, LLC (Assignee for the Benefit of Creditors).

3. On December 12, 2013, AGENA submitted a claim to the Assignee for the Benefit of Creditors for \$1,462,280; the full amount of the intervenor compensation awarded by D.13-11-018.

4. On September 5, 2014, the Assignee for the Benefit of Creditors distributed \$236,468.34 to Legal Services of Northern California, as the representative of AGENA.

5. On June 20, 2014, the Governor signed Senate Bill 861, 2014 Chapter 35, § 156.5, which added § 1807(b) to the California Public Utilities Code.

6. On September 8, 2014, AGENA filed a petition to modify D.13-11-018 requesting that the Commission modify D.13-11-018 to authorize payment, through the Intervenor Compensation Fund, of the difference between what was received through SNGS's insolvency proceeding and the amount awarded by

D.13-11-018, plus appropriate interest. The petition was filed within one year of the issuance of D.13-11-018.

7. The petition to modify D.13-11-018 is uncontested.

Conclusion of Law

1. AGENA's petition for modification of D.13-11-018 satisfies the requirements of Rule 16.4.

2. AGENA's petition for modification of D.13-11-018 should be granted.

3. Section 1807(b) authorizes the Commission to award AGENA the difference between the amount received through SNGS's insolvency proceeding and the original award, plus appropriate interest, granted by D.13-11-018, by increasing the fees collected in § 401 for the limited purpose of D.13-11-018.

4. Because the Intervenor Compensation Fund is financed through the fees collected pursuant to § 401 et seq., paying from the Fund the difference between the monies already received by AGENA and the amount awarded by D.13-11-018 is consistent with § 1807(b).

5. This decision should be effective immediately so that AGENA may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Avondale Glen Elder Neighborhood Association's Petition to Modify Decision 13-11-018 is granted.

2. Ordering Paragraph 1 of Decision 13-11-018 is modified, as follows: Avondale Glen Elder Neighborhood Association (AGENA) is awarded \$1,462,280. AGENA has already recovered \$236,468.34 of this award through the insolvency proceeding entered into by Sacramento Natural Gas Storage, LLC.

Therefore, AGENA shall be paid \$1,225,811.66 from the Intervenor Compensation Fund.

3. Within 30 days of the effective date of this decision, the Commission's Fiscal Office shall disburse the awarded compensation from the Commission's Intervenor Compensation Fund. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 2, 2013, the 75th day after the filing of Avondale Glen Elder Neighborhood Association's request, and continuing until full payment is made.

4. Application 07-04-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.